IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 17019 of 2006

DATED: 15.09.2006

Between:

R.Koteswara Rao Petitioner

And

The Government of Andhra Pradesh
Rep by its Prl. Secretary, Revenue (Excise.II)
Secretariat, Saifabad, Hyderaba & others Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 17019 OF 2006

ORAL ORDER:

The writ petition is filed assailing the notification dated 12.8.2006 issued by the third respondent, in substance re-notifying the conduct of auction for collection and sale of tonsured hair of devotees of Sri Yadagirigutta Lakshmi Narasimha Swami Vari Devasthanam, Yadagirigutta, Nalongda district.

The third respondent had earlier issued a notification dated 24.7.2006 calling for tenders for collection and sale of tonsured hair of devotees of the Devastanam. The lease/licence for this purpose was specified to be for one year, commencing from 29.8.2006 to 28.8.2007 and stipulated that persons desirous of obtaining a lease/licence for the notified period must deposit Rs.5,000/- by way of demand draft and submit the same along with a challan for Rs.1,000/- for obtaining the tender schedule on or before 10.8.2006. The tenders were to be issued up to 12.8.2006, the sealed tenders were to be lodged by the afternoon of 14.8.2006 and the auction was scheduled to be held at 3.00 p.m. on 14.8.2006.

The twenty nine (29) petitioners claim to have been responded to the tender cum public auction notification dated 24.7.2006 and to have submitted their bids. While so, on

12.8.2006, the impugned notification, in substance giving up the earlier tender cum public auction schedule and permitting fresh bids was issued by the third respondent.

The petitioners specifically and categorically allege that the fresh notification dated 12.8.2006 was issued by the third respondent, only to facilitate participation of the 4th respondent and not for any other rational or germane grounds. Since the participation of the 4th respondent might raise the bid stakes, the petitioners are aggrieved and have come to this Court alleging that eschewing of the earlier tender process, pursuant to notification dated 24.7.2006 is irrational and constitutes an arbitrary exercise of power.

The second respondent-Commissioner of Endowments has filed a counter affidavit dated 25.8.2006 stating that the answering respondent is not aware of the facts and circumstances in which the impugned notification dated 12.8.2006 was issued by the 3rd respondent and that as a matter of law, in accordance with Rule 5 (VI) of the relevant Rules, issued in G.O. Ms No. 866 Revenue Department dated 13.8.2003, the Executive Officer of the Devastanam, has competence and authority and also as per the conditions in the auction notice, to postpone the auction without assigning any reasons.

The third respondent has filed two counter affidavits one on 20.8.2006 and another on 9.9.2006. To the extent relevant for the purposes of this writ petition, the third respondent asserts that he had formed an impression that the petitioners had formed a ring to ensure that the leasehold rights for the collection of tonsured human hair and sale thereof, is obtained by them at less than a

competitive price and have joined together and appear to have ensured that a higher bid is not obtained in the public auction. It is also asserted that while in the previous year an amount of Rs.45,00,000/- was obtained for the same purpose in Sri Yadagirigutta Lakshmi Narasimha Swami Vari Devasthanam and a similarly circumstanced devastanam – Sri Raja Rajeshwara Swamy Devasthanam, Vemulavada obtained an income of Rs.1,02,00,000/- in the current year. The 9th petitioner was the leaseholder in the previous year. In the year 2004, also, the 9th petitioner had filed a writ petition assailing the conduct of auction and just before the conduct of an auction, some litigation or the other is filed and the auction process is either stalled or competitive bids are smothered, is the substance of the 3rd respondent's counter affidavit dated 20.8.2006.

In a subsequent counter affidavit dated 9.9.2006, the third respondent states (in para 5) that other temples such as Sri Kanaka Durga Temple, Vijayawada, Sri Laxminarasimha Swamy Temple, Simhachalam and Sri Venkateshwara Swamy Temple, Dwaraka Tirumala have derived much higher income in the years 2004-05, 2005-06 and in the current year 2006-07 too, than what was fetched in the previous year for the third respondent temple. The third respondent also asserts in this counter that he entertained a suspicion that a cartel might have formed to ensure that no outsider files a tender, except an existing lessee and his associates. This impression is stated to have been formed by the third respondent on the basis of information received from the subordinates and on an analysis of the comparative amounts received by the respondent-Devastanam and comparable temples.

For the aforesaid reason, in view of the available power under the Statutory Rules as well as condition No. 10 of the conditions of the tender notification, the third respondent claims to have exercised the available power, to postpone the auction. The petitioners' allegation that he has postponed the auction merely to facilitate participation of the 4th respondent, is categorically and unequivocally denied.

At the hearing of the writ petition, the mutual recriminations by the petitioners and the third respondent are reiterated, one alleging extraneous consideration by the third respondent and the third respondent alleging the formation of the cartel by the petitioners. Those are not mere disputed questions of fact, which can be weighed and evaluated by an analysis of the evidence, oral or documentary. Adjudication of these allegations involves a psycho analysis of minds, which is not the province of this Court.

Suffice it to record that the satisfaction of the first respondent that a competitive value would not be received by the third

respondent-Devastanam by confining the auction to only those who had submitted bids pursuant to the earlier auction notification dated 24.7.2006 does not appear to be perverse for the reasons stated in the counter affidavit.

Today, when the matter is taken up for disposal, the learned counsel for 4th respondent has placed before the Court a demand draft bearing No. 128767 dated 14.9.2006 drawn on State Bank of India- Hyderabad branch for an amount of Rs.1,35,00,000/-, (Rupees one crore and thirty five lakhs only) as evidence of the 4th respondent's bonafides that he is a serious participant for the

bids.

In view of the allegations asserted by the petitioners and the third respondent against each other and in view of the fact that the third respondent states that the amount received during the previous year for the third respondent-Devastanam is not comparable to the amounts received by similarly situated temples, this Court considers it appropriate to direct the third respondent to issue a fresh auction notification within seven days from the date of receipt of a copy of this order, specifying that the auction would be conducted in the office of the second respondent at Hyderabad and under the second respondent's supervision. The date and time of the auction shall be fixed by the 3rd respondent in consultation with the second respondent. The existing bids submitted by the petitioners shall also be considered at such auction. The amount of Rs.1,35,00,000/- (deposited by the 4th respondent by way of demand draft as aforesaid, payable in favour of the third respondent devastanam) shall be considered as the minimum bid amount, unless the bids already submitted by the petitioners or to be submitted pursuant to the notification now to be issued by the third respondent contain a higher bid than the amount now furnished by the 4th respondent. The auction shall be conducted under the supervision of second respondent. In the event no bid higher than the 4th respondent's offer of Rs.1,35,00,000/- is obtained at the auction to be held, the second and third respondents may in their discretion consider the amount furnished by the 4th respondent
(of 1,35,00,000/-) as his bid and pass appropriate orders. In the event of no higher bid received in the de-novo exercise, if the

4th respondent is unwilling to take up the offered lease, the 4th respondent shall forfeit the amount of Rs.1,35,00,000/-.

The writ petition is disposed of as above. No costs.

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GODA RAGHURAM,J

DATE: 15.9.2006
TVK

THE HON'BLE MR JUSTICE GODA RAGHURAM

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